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UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF NEW YORK

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In the Matter of:

BRICKCHURCH ENTERPRISES, INC., Main Case No.

Debtor. 22-70914-ast

- - - - -x

United States Bankruptcy Court

290 Federal Plaza

Central Islip, New York

October 26, 2022

11:34 AM

B E F O R E:

HON. ALAN S. TRUST

U.S. BANKRUPTCY JUDGE

ECRO: ELECTRONIC RECORDING



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2 Motion for Authority to Obtain Credit Under Section 364

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18 BY: RICHARD KANOWITZ, ESQ.

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UNITED STATES DEPARTMENT OF JUSTICE

Attorneys for Office of the United States Trustee

560 Federal Plaza

Central Islip, NY 11712

BY: WILLIAM BIRMINGHAM, ESQ.

ALSO PRESENT:

LOUISE T. BLOUIN, Brickchurch Enterprises, Inc.



## BRICKCHUIRCH ENTERPRISES, INC.

1 P R O C E E D I N G S

2 THE CLERK: Case Number 22-70914, Brickchurch  
3 Enterprise, Inc.

4 THE COURT: I'll take appearances, please, starting  
5 with the debtor.

6 MS. SIMMONS: Good morning, Your Honor. Camisha  
7 Simmons on behalf of the debtor, Brickchurch Enterprises, Inc.

8 MS. BLOUIN: Good morning. Louise Blouin.

9 THE CLERK: What was her name?

10 THE COURT: Blouin. And for JGB?

11 MR. KANOWITZ: Good morning, Your Honor. Richard  
12 Kanowitz, Haynes and Boone, on behalf of JGB. With me is  
13 Michael Pfiffer (ph.) as well as Greg Kramer. And we also have  
14 Brett Capone, principal of JGB, in the court with us.

15 THE COURT: All right. And then Office of the United  
16 States Trustee?

17 MR. BIRMINGHAM: Good morning, Judge. William  
18 Birmingham, Office of the United States Trustee.

19 THE COURT: Do we have any other parties-in-interests?

20 MR. ALLERDING: Good morning, Your Honor. John  
21 Allerding of Thompson Hine on behalf of Baypoint Capital  
22 Partners II LP, proposed DIP lender, along with John Isbell and  
23 Curtis Tuggal (ph.).

24 UNIDENTIFIED SPEAKER: Good morning, Your Honor.

25 MR. ALLERDING: And also we have Charles Andros with



## BRICKCHUIRCH ENTERPRISES, INC.

1 us from Baypoint.

2 THE COURT: Is it Mr. Harding is it?

3 MR. ALLERING: Allerdning, A-L-L-E-R-D-I-N-G.

4 THE COURT: Thank you.

5 MR. ALLERDING: Thank you, Your Honor.

6 THE COURT: Anyone else?

7 MS. SIMMONS: Your Honor, are we requiring counsel to  
8 come to the podium or are we -- staying over here, just want  
9 to --

10 THE COURT: Right now I'm just calling the room. So  
11 is there anyone else who wants to make an appearance?

12 MS. SIMMONS: Yes, Your Honor. The debtor filed the  
13 retention application for Duane Morris as a special litigation  
14 counsel. And Brad Messenger of Duane Morris is here.

15 MR. MESSENGER: Good morning, Your Honor. Good to see  
16 you.

17 THE COURT: Good morning. Anyone else?

18 All right. Let me go over a few housekeeping issues.  
19 First, in terms of health and safety COVID protocols, the Court  
20 did require that in advance of the hearings, the parties notify  
21 the Court through my courtroom deputy as to the vaccination  
22 status. The names that the Court received indicated that  
23 everyone who planned to be present had been vaccinated.

24 We may have more people in the courtroom than we have  
25 listed on the appearance sheet. So because the vaccination



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1 status is a health and safety issue, but also a personal health  
2 and safety issue, I don't put this information, your name, on  
3 the record.

4 So for those of you who are present who have not --  
5 who have not disclosed your vaccination status, you need to  
6 leave your masks on at all times. For those of you who are  
7 present who did indicate your vaccination status as vaccinated,  
8 you can take your mask off if you wish to do so. Anyone who  
9 wishes to keep their mask on is welcome to do so as a health  
10 and safety matter. And anyone who has disclosed to the Court  
11 that they are fully vaccinated, you may take and keep your mask  
12 off throughout the proceedings if you wish to do so. If you  
13 have to keep it on, you're certainly welcome to do that as  
14 well.

15 In terms of the issues for this morning, since I see a  
16 lot of notebooks and not a lot of smiles, I take that to mean  
17 that you all have -- the debtor and JGB have not settled. Is  
18 that --

19 MR. KANOWITZ: That would be correct, Your Honor.

20 MS. SIMMONS: Yes, Your Honor. At this point, no  
21 settlement has been made.

22 THE COURT: When was the last time you all had a  
23 meaningful settlement discussion?

24 UNIDENTIFIED SPEAKER: Oh, we had one the other day.

25 MS. SIMMONS: There have been communications, Your



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1 Honor, back and forth throughout the process. And there's  
2 always the possibility of settlement up until the time for  
3 payment.

4 THE COURT: All right. Then in my ongoing endeavor to  
5 not be cryptic with the parties, and I'll repeat what I'm  
6 pretty sure I said last time we gathered when we gathered  
7 virtually, one of the reasons that I had you all docket a  
8 letter as to how much was not in dispute as to what was owed to  
9 JGB and how much was in dispute as to JGB was for me to get a  
10 sense of, first, whether there is enough money proposed to come  
11 in from the security lender to cover the fifty-two-million-  
12 dollar threshold that the Court had set, and two, to see if a  
13 protocol could be worked out where if the loan is approved and  
14 funded in time, JGB would be paid the undisputed amount which  
15 you both -- which the debtor and JGB appear to agree to the  
16 same undisputed amount, although there was no indication of one  
17 of the debtors letters that there may be 120-dollar difference.  
18 I'm not sure why that is.

19 But the information the Court has right now is that  
20 the debtor JGB agree that JGB is owed on an undisputed basis a  
21 secured claim of \$46,452,271.51. And there's a dispute as to  
22 4.6 million dollars or so. You have agreed to the same  
23 disputed number. You don't agree -- you at least agree to the  
24 same disputed number. And so my math tells that those numbers  
25 add up to less than fifty-two million dollars and that the





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1 problem hearing the proposed DIP lender had said that their  
2 proposed loan was fifty-two million dollars plus the add-ons,  
3 the lender's finance fee, and et cetera.

4 So my question now to you all is, are you all amenable  
5 to the protocol that I'm pretty sure I suggested last time that  
6 if the loan is approved, the undisputed portion is paid, paid  
7 by the deadline that the Court had previously fixed, the  
8 disputed person is safely held somewhere while you-all quickly  
9 duke out how much of the -- how much of the disputed portion  
10 should then be paid?

11 MR. KANOWITZ: Yes. Yes, Your Honor. From JBG's --

12 THE COURT: You can -- it might be easier -- but to  
13 answer Ms. Simmons' question -- it'll be easier just for the  
14 audio system to just work now from the lectern.

15 MR. KANOWITZ: For the record, Richard Kanowitz on  
16 behalf of JGB.

17 Your Honor, the answer is yes, subject to obviously  
18 clarification concerning the DIP order and the payment motion  
19 and making sure the mechanisms and processes are safeguarded  
20 for JGB's adequate protection in the indemnity reserve and  
21 other types of things that you are alluding to in the disputed  
22 category would be escrowed by a third-party escrow agent held  
23 for the benefit until such further order of the Court.

24 There is no -- another potential issue though that we  
25 brought up. And we can address it at the appropriate time.



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1 THE COURT: Okay. Ms. Simmons?

2 MS. SIMMONS: Camisha Simmons on behalf of the debtor,  
3 Brickchurch Enterprises, Inc.

4 Your Honor, as aware in our pleadings, it's the  
5 debtor's position that that 4.6 million plus JGB is not  
6 entitled to. As the Court has repeatedly stated in these  
7 proceedings, the referee report is what the Court is going by.  
8 So the amount of the asserted for attorneys' fees that are not  
9 in the foreclosure judgment and actually were crossed out in  
10 the order of foreclosure, they're not entitled to those  
11 disputed amounts. And to the extent they haven't paid property  
12 taxes, they're not entitled to those amounts. And to the  
13 extent that they want a 2.5 million indemnity reserve and  
14 burdening the estate with a 2.5-million-dollar indemnity  
15 reserve, they're not entitled to that amount.

16 So it's the debtor's position that that amount should  
17 not be escrowed. Their allowed secured claim is the undisputed  
18 amount. And we're asking the Court to award that. Now, we're  
19 going to abide by any order of the Court in terms of how the  
20 Court wants to structure this transaction and the payouts.  
21 However, it's our position that those undisputed amounts  
22 shouldn't be escrowed because they're not entitled to those  
23 amounts pursuant to the referee report and according to the  
24 Court's position in terms of applicable law as to what they're  
25 entitled to recover.



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1 THE COURT: So I think that's a long way of saying no  
2 without saying no, that the debtor is not prepared to enter  
3 into an agreement. If the Court approves the financing under  
4 which the undisputed financials would be paid as soon as the  
5 loan funds, the disputed portion would be escrowed somewhere,  
6 pending determination as to how much of that amount should  
7 actually be paid over.

8 MS. SIMMONS: Your Honor, the debtor would prefer for  
9 that not to be what the Court awards. But the debtor will  
10 abide by any order of the Court to move forward in the --

11 THE COURT: Yeah. Let me -- so just again, and in the  
12 interest of not being cryptic, this hearing is not going to end  
13 with the loan being approved and the disputed portion not being  
14 escrowed. And so if that advances the potential conversation  
15 or not, I would welcome you all to have a further conversation.  
16 But there's simply not a way that this hearing runs today with  
17 the Court approving the loan and the disputed portion not being  
18 asked for pending determination of how much that's owed or not.  
19 That would be a complete failure of adequate protection to the  
20 secured creditor.

21 And so since we're clearly not going to do that, I  
22 would welcome you to take about twenty or thirty minutes and  
23 see if you can figure out how the escrow the funds, with whom  
24 to escrow funds, and which court is going to decide how much of  
25 the escrowed funds get to be paid over and under what time



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1 line.

2 One thing that I've learned in my fourteen-plus years  
3 sitting on this side of the bench on top of the twenty-  
4 four-plus years sitting on that side of the bench, is that  
5 money sitting in escrow doesn't do a whole lot of good for  
6 anybody other than maybe the escrow agent who probably isn't  
7 earning a whole lot of interest on it anyway.

8 And so I recognize that you all have a state court  
9 appeal pending. I recognize that there are some pure  
10 bankruptcy issues on liability and some pure state law issues  
11 on liability. And so I can see a scenario where one of you  
12 says, well, I'd rather have the state court decide categories 1  
13 through 6 but have the Bankruptcy Court decide categories 7, 8,  
14 and 9 of the dispute. I mean, that's certainly theoretically  
15 viable, but it's probably going to take a lot more time. And  
16 so if the old -- if the age-old adage is true, that time is  
17 money, I would invite you all to try to figure out a mechanism,  
18 again, if you amenable.

19 If you're not amenable, then we'll have the hearing  
20 and I'll make my orders. And you all can pretty much with  
21 99.94 percent accuracy and figure out what's going to happen  
22 for the undisputed -- for the disputed dollars. Maybe you all  
23 can have a meaningful conversation for twenty or thirty minutes  
24 to see if you can edge out the rest of it. But also said, it  
25 is 99.94 percent unlikely that I'm going to approve the DIP



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1 motion and dismiss the case. So if are banking -- if you are  
2 hedging the prospects of the case being dismissed and the  
3 financing approved, I can sort of take that one off your --  
4 what's under the river card if you have plans in Texas Hold 'Em  
5 here. So --

6 MR. KANOWITZ: May I address the Court, Your Honor?

7 THE COURT: Yes.

8 MR. KANOWITZ: And I'm addressing it not because of  
9 anything that you said in the objection. I think that's  
10 exactly what should have happened already in this case.

11 But I'm addressing it so that Ms. Blouin understands  
12 where we are from JGB's perspective, because we've communicated  
13 a very favorable offer to this debtor.

14 JGB's position is abundantly clear. We want to be  
15 indefeasibly paid in full period, end of story. We want a  
16 general release. We want to go on with our life. If the  
17 debtor wants to do this DIP, they can do the DIP. What they  
18 can do two things from our perspective: 1, a lien on nondebtor  
19 property to do this DIP and not give us adequate protection.  
20 And so that goes to the crux of what you're saying, which is we  
21 need to have indemnity reserve. We need to have the escrow put  
22 in place. And we need Your Honor to make rulings because it's  
23 a bankruptcy issue. We're an oversecured creditor by their own  
24 admission. They're looking to combine the compound, which,  
25 again, earlier in this case, that's the path we should have



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1 taken. We didn't. And now it's -- now we're having a compound  
2 discussion. They're asking you to approve a DIP with a  
3 nondebtor. So all I'm saying from -- we communicated and also  
4 the level below the foreclosure judgment amount, full releases.  
5 We didn't get anywhere.

6 THE COURT: Well, I don't want to know who offered  
7 what to who and who demanded what and all that who shot John  
8 part. Right now I'm just trying to figure out that can you all  
9 agree on how to fight about the part that I think you're  
10 actually fighting about, which is how to treat the  
11 4.6-billion-dollar escrow. But I'm not asking you all -- I  
12 mean, it'd be great if you came back in twenty minutes and said  
13 we settled all of it, the number is X, and we're going to get  
14 it in fourteen days and we're done.

15 But right now I'm just asking you to talk about  
16 whether you can agree on mechanically how we get a decision out  
17 of which court on the disputed portion. I don't want either of  
18 you to misread me. I've not decided what was in those eight or  
19 nine categories is actually allowable. I'm not making any  
20 decisions like yeah, it's 4.695, they're going to end up  
21 getting all of it. I'm not there. I'm just trying to see if  
22 you all can agree on mechanically which court is going to  
23 decide those amounts and how to do that in the most  
24 cost-effective and efficient manner.

25 I'm also not asking to take more work from you, but I



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1 recognize the realm of the case is that dispute needs to be  
2 decided. It should be decided relatively quickly because,  
3 again, that that amount of money just sitting there -- by that  
4 amount, I mean just under 4.7 million dollars, doesn't really  
5 help -- doesn't really help anybody.

6 MR. KANOWITZ: Very well, Your Honor. We're prepared  
7 to have those discussions as you direct.

8 THE COURT: All right. So I'm going to recess you all  
9 until -- fifteen lawyer minutes is really thirty tick-tock  
10 on-the-clock minutes. So why don't you all come back in at  
11 12:20? And we'll see where we are.

12 MR. KANOWITZ: Thank you, Your Honor.

13 Your Honor, I would just we'll let your court  
14 personnel know we're sort of on our way but not going to be  
15 completed at 12:20, that's okay.

16 THE COURT: Yeah, I'll have Ms. Mills come back with  
17 at 12:20. And if everybody smiling and going like this, she'll  
18 bring me back in. And if I see some -- if she sees some  
19 frowning faces, then she'll bring me in, okay?

20 MR. KANOWITZ: We'll just do thumbs up,, all right?  
21 Thumbs up, thumbs down works great. Thank you all. We'll be  
22 in recess then until 12:20. We'll go off the record.

23 (Recess from 11:51 a.m., until 1:14 p.m.)

24 THE COURT: Back on the record on Brickchurch  
25 Enterprises, 22-70914. Ms. Simmons and Mr. Kanowitz?



## BRICKCHUIRCH ENTERPRISES, INC.

1 MR. KANOWITZ: Yes, Your Honor. Good afternoon.

2 First, the parties, all of here, the attorneys, the clients, we  
3 do appreciate the patience that you had with us today. Yeah.  
4 Your directions to us, I bore fruit. And we're pleased to  
5 report a resolution of the entire case as between the debtor,  
6 JGB, and the guarantors under the JGB loan documents.

7 Obviously, everything is subject to definitive  
8 documentation. And there are certain housecleaning things that  
9 we probably need to do for the record. But if we can describe  
10 for you in the 30,000-foot viewpoint of -- from us what we're  
11 trying to accomplish and what we're going to be doing over the  
12 next couple of days. And then, obviously, I believe the debtor  
13 wants to move forward on the DIP hearing and make sure that the  
14 proper factual predicate for Your Honor granting it and giving  
15 the proposed DIP lender its protections, et cetera, are on the  
16 record.

17 Clearly we have work to do on that form of order, but  
18 we'll deal with the administrative stuff. So --

19 THE COURT: All right.

20 MR. KANOWITZ: I'll be happy to tell you what the  
21 big-picture settlement is. And obviously the debtor's counsel  
22 could correct me if I miss it. But bottom line is, and again,  
23 subject to definitive documentation, is JGB will be paid 44.5  
24 million dollars. It will be paid at closing. The hope is that  
25 closing will happen by November 9th. However, we're going to





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1     bake into the documents that they do have till November 30th of  
2     2022 to get it done. There is some issues with Suffolk County.  
3     Hopefully title gets issued, and we can move forward faster.  
4     So that's the big ticket as to the number.

5             As to what's going to happen with these loan documents  
6     and proofs of claim for the benefit of the proposed DIP lender  
7     at closing and subject to being paid, JGB is going to assign  
8     all of the loan documents to the DIP lender as well as its  
9     proofs of claim. How the DIP lender proceeds from there, it's  
10    up to the DIP lender. There is assignments of all the loan  
11    documents, including its proofs of claims, are going to be  
12    without recourse to JGB, meaning we are giving them what they  
13    what they get and we're done with them. We're going to need a  
14    release as to those loan documents and assignments from  
15    Baypoint. And we'll build that into the documents.

16            As to the debtor's estate, once the 45 -- once 44.5 is  
17    paid, the parties are going to enter into releases from the  
18    beginning to the date of the release. And the loan parties are  
19    going to be obviously the debtor, Brickchurch, Aberdeen who is  
20    a nondebtor because that's 376 Gin Lane because that is that is  
21    one of the properties that's coming on to the DIP, the two  
22    guarantors, and anybody else.

23            The only thing that I would say to you, Your Honor, is  
24    while we're going to ask for this debtor to sign a release to  
25    be effective, I don't think we should spend time unless you



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1 direct for a 9019 motion to get him released effective. We're  
2 going to ask the debtor, to the extent they file a plan, to  
3 imbed that release and confirm that release by Your Honor's  
4 order in a plan.

5 Now, obviously, if they don't file a plan and move to  
6 dismiss their case once we're out of it, at least we have the  
7 writing That Brickchurch gave a release. And obviously they're  
8 going to have a new lender and the parties go their separate  
9 way.

10 So that that, in a nutshell, is what is going to  
11 happen as to, again, JGB, Baypoint, the guarantors, as well as  
12 the debtor and the nondebtor.

13 THE COURT: Okay.

14 MR. KANOWITZ: As to the DIP, yes, we are withdrawing  
15 our objection provided of course that the deal closes. So as  
16 to the various different liens that the DIP lender is going to  
17 get, they need to be subordinate to JGB until such time as  
18 they're paid off, which makes sense because the assignments and  
19 everything is going to be affected as of closing. So we have  
20 to tweak the language. So we state that on our objection. We  
21 leave it to the debtor to convince the Court that in its  
22 business judgment, it should proceed with the DIP. I believe  
23 there are certain other things that need to be put on the  
24 record, but that's the universe where we are.

25 THE COURT: All right. And for clarity, 44,500,000



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1 dollars?

2 MR. KANOWITZ: Correct.

3 THE COURT: Okay. All right. Okay. Ms. Simmons?

4 MS. SIMMONS: Yes, Your Honor. Good things happen.  
5 There is a God above. And so we worked out a deal. Me, in  
6 conjunction with Baypoint, are going to run through the numbers  
7 in terms of what was worked out and what the financing package  
8 looks like before we go into of course the evidentiary hearing.

9 MR. ISBELL: Thank you, Your Honor. John Isbell,  
10 Baypoint.

11 First of all, I wanted to agree with what counsel for  
12 JFB said as far as the value of the release as far as recourse  
13 and specific release as far as the loan documents. We agree  
14 with that.

15 In terms of the total loan amount, it looks like this  
16 is still subject to a few moving parts, but looks like it's  
17 going to come in about 61.3 million total. Of that amount,  
18 fifty-two million will go to the estate. Of that fifty-two  
19 million rough numbers, it looks like 44.5 million to JGB, 3.1  
20 million will establish a six-month interest reserve for the  
21 debtor so the debtor doesn't have to make monthly interest  
22 payments, It looks like 250,000 to the U.S. Trustee,  
23 approximately 475,000 in taxes and claims. And then we've  
24 allocated another 250,000 in legal which will leave a little  
25 bit of cushion in the estate, roughly about 3.4 million dollars



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1 of a cushion in the estate at that point, subject to the loan  
2 documents, what would be mandatory paydowns and whatnot, once  
3 claims are paid.

4 On top of the fifty-two million going to the estate,  
5 there's roughly 5.6 million in origination fees. 2.6 million  
6 has been allocated to reinstate the loan on the nondebtor  
7 property for Morgan Stanley, 400,000 roughly legal to document  
8 the deal, roughly 400,000 dollars of recording taxes and for  
9 New York, and then the real estate broker of the 310-. That  
10 gets us to roughly the \$61.3 million.

11 Charles Andros is here on behalf of Baypoint, has  
12 submitted an affidavit. He can attest to those numbers and the  
13 materials in his affidavit as well as going through the process  
14 of identifying the debtor, doing diligence on this loan to  
15 satisfy the good-faith requirements that we have in the DIP  
16 order as well.

17 THE COURT: Okay.

18 MS. SIMMONS: And, Your Honor, I will concur those  
19 numbers.

20 In terms of moving to the evidentiary portion, we  
21 have, of course, submitted our witness and exhibit list, and we  
22 have three witnesses: Mr. Andros at Baypoint, Ms. Blouin,  
23 principal of the debtor, and also Geoff Gifkins of Nest Seekers  
24 International.

25 We didn't submit our recent affidavit for Mr. Gifkins,



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1 but they are numerous affidavits attesting to the marketing and  
2 sale process of Mr. Gifkins on the record and on other exhibit  
3 lists.

4 So Your Honor, I know your process is to have direct  
5 testimony serve through affidavit.

6 THE COURT: Ms. Simmons -- I'm sorry, Ms. Simmons.  
7 Before we get to that evidentiary part, I would like to get  
8 confirmation on the record from the debtor's principal that the  
9 settlement as announced on the record has been agreed to by the  
10 principal of the debtor. And then I would like to get the same  
11 from the principal of JGB.

12 MS. SIMMONS: So Ms. Blouin, as you have heard the  
13 testimony regarding the settlement, the line-item numbers of  
14 the settlement, and also the information regarding the global  
15 release with JGB, do you agree with what was stated on the  
16 record in terms of what was agreed to today during these  
17 proceedings?

18 MS. BLOUIN: I do.

19 THE COURT: All right. Thank you.

20 And Mr. Kanowitz, for your client?

21 MR. KANOWITZ: Yes. Mr. Cohen is here.

22 And likewise, Mr. Cohen, do you affirm the resolution  
23 of this matter for the terms and conditions as described on the  
24 record, subject to definitive documentation?

25 MR. COHEN: Yes.



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1 THE COURT: All right. Thank you.

2 And I'm going to get the same from Mr. Andros, but  
3 he's testifying about the financing. So I would take that  
4 as -- from the testimony that he would be presenting rather  
5 than an affirmation of the settlement.

6 And so Ms. Simmons, the part where I interrupted you  
7 was where you were talking about how I how I take the  
8 testimony. And you're right, I do take that by a by direct.  
9 And so in the witness and exhibit list that was submitted by  
10 the debtor, I do have Ms. Blouin's affidavit at Exhibit D and  
11 then Mr. Andros's affidavit as Exhibit E as in Edward, so D as  
12 in David, E as in Edward.

13 What I typically do this is I'll have the witness come  
14 forward, affirm the statements contained in the affidavit are  
15 true and correct to the best of their knowledge and belief,  
16 tender them for cross if anybody has cross. I'm supposing  
17 that's a no now where we are, but still to have that  
18 opportunity.

19 So let's just go ahead and proceed in that fashion.  
20 If you're now wanting to move to the evidentiary portion of the  
21 bond motion, I was waiting to hear -- because I am still not in  
22 the assuming business -- that the motion to dismiss is  
23 withdrawn based upon the settlement put on the record.

24 MR. KANOWITZ: Well, Your Honor, I was going to ask  
25 you -- again, Richard Kanowitz, sorry, for the record.



## BRICKCHUIRCH ENTERPRISES, INC.

1 I was going to ask you, how would you like to proceed?

2 I don't want to rain on anybody's parade, but if the deal  
3 doesn't close, there's no DIP liens, we're still back in  
4 bankruptcy. I think the best thing for us to do is to carry  
5 everything forward to a date sometime in December. And  
6 hopefully we just never get there.

7 THE COURT: All right. Ms. Simmons, does that work  
8 for you?

9 MS. SIMMONS: Your Honor, of course. The debtor would  
10 prefer that they withdraw their motion to dismiss.

11 THE COURT: Okay. Well, I'm going to carry it under  
12 the assumption that it moots because it would be for those  
13 obvious reason. So let's go ahead -- do you want to bring Ms.  
14 Blouin first or do you want to do Mr. Andros first?

15 MS. SIMMONS: Your Honor, we can bring Ms. Blouin  
16 first to the stand.

17 THE COURT: All right.

18 MS. SIMMONS: Ms. Blouin?

19 THE COURT: So Ms. Blouin if you'll -- you probably  
20 won't spend a lot of time there. But if you'll got to the  
21 witness stand over to your right. And when you get there, just  
22 remain standing so that I can swear you in.

23 Is that on now? There's a HEPA filter in the witness  
24 box. That's what -- Ms. Blouin, would you raise your right  
25 hand?



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1 (Witness sworn)

2 THE COURT: All right. So you can sit down.

3 Ms. Blouin, the Court is in receipt of an affidavit  
4 dated as of October 21, 2022. It's filed at ECF docket item  
5 146. Is that is that your exhibit book there, Ms. Simmons?

6 MS. SIMMONS: What was that, Your Honor?

7 THE COURT: Is that your exhibit book?

8 MS. SIMMONS: Yes. The white exhibit book is  
9 debtor's.

10 MS. BLOUIN: Sorry. I can't hear very well because I  
11 have a machine next to me.

12 THE COURT: If you would open that exhibit book --

13 MS. SIMMONS: Yes.

14 THE COURT: -- for the document from line 10, D as in  
15 David. D as in David.

16 MS. BLOUIN: Okay. Thank you. I can't hear you very  
17 well because I have a fan next to me.

18 THE COURT: Yeah.

19 MS. BLOUIN: Yes.

20 THE COURT: Is that an affidavit that you executed?

21 MS. BLOUIN: Yes.

22 THE COURT: And are the statements in that affidavit  
23 true and correct to the best of your knowledge and belief?

24 MS. BLOUIN: Correct. Yes.

25 THE COURT: So the Court is admitting Exhibit D.





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1 (Affidavit of Louise Blouin was hereby received into  
2 evidence as Debtor's Exhibit D, as of this date.)

3 THE COURT: Well, do you have any questions you want  
4 to ask Ms. Blouin, Ms. Simmons?

5 MS. SIMMONS: No, Your Honor. We'll rest on her  
6 affidavit.

7 THE COURT: Any cross either from JGB or the United  
8 States Trustee?

9 MR. BIRMINGHAM: No, Your Honor.

10 MR. KANOWITZ: No, Your Honor.

11 THE COURT: Okay. State your name because I know who  
12 you are, but the audio doesn't, the U.S. Trustee's Office.

13 MR. BIRMINGHAM: William Birmingham, Office of the  
14 United States Trustee. No questions, Judge.

15 THE COURT: All right. Thank you.

16 Ms. Blouin, you may return to your seat.

17 MS. BLOUIN: Thank you.

18 MS. SIMMONS: Your Honor, next the Debtor will call  
19 Mr. Charles Andros of Baypoint Advisors.

20 THE COURT: Mr. Andros, when you get to the witness  
21 stand, just remain standing so I can swear you in. If you  
22 would raise your right hand.

23 (Witness sworn)

24 THE COURT: In the exhibit book behind Tab E as in  
25 Edward, do you see the affidavit with your name?



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1 MR ANDROS: Yes.

2 THE COURT: Do you (indiscernible) affidavit?

3 MR ANDROS: Yes.

4 THE COURT: Are the statements contained in the  
5 affidavit true and correct to the best of your knowledge and  
6 belief?

7 MR ANDROS: Yes, sir.

8 THE COURT: Ms. Simmons, any follow-up in anything  
9 related to the announcement that was made on the record as to  
10 the settlement or do you want Mr. -- is it Mr. Allerdine?

11 MR. ISBELL: I'm Mr. Isbell.

12 THE COURT: Oh, Isbell. Sorry. If you'd like to  
13 handle that part.

14 MR. ISBELL: Yes, if I could. I don't know if this  
15 would be direct or cross, but probably direct since he's my  
16 client.

17 DIRECT EXAMINATION

18 BY MR. ISBELL:

19 Q. Mr. Andros, you have informed the Court that the sources  
20 of funds a few minutes ago. Is that information -- is that  
21 reporting accurate?

22 A. Yes.

23 Q. And Mr. Andros, of that sources of uses, there was roughly  
24 a 5.6-million-dollar origination fee; is that accurate?

25 A. Yes.



## BRICKCHUIRCH ENTERPRISES, INC.

1 Q. That's what was agreed to by the debtor?

2 A. Yes.

3 Q. And what are you asking the Court to approve today?

4 A. Yes.

5 Q. And roughly another 400,000 dollars of it is going to be  
6 used for professional expenses, diligence fees? Does that  
7 sound about accurate?

8 A. Correct.

9 Q. And again, that's the actual fees that are incurred by  
10 Baypoint documenting this, correct?

11 A. Correct.

12 MR. ISBELL: Okay. Nothing further, Your Honor.

13 THE COURT: Mr. Kanowitz?

14 MR. KANOWITZ: Your Honor, we have no questions at  
15 this time. Thank you.

16 THE COURT: Mr. Birmingham?

17 MR. BIRMINGHAM: No questions, Judge.

18 THE COURT: All right. Mr. Andros, you may return to  
19 your seat. Thank you.

20 THE WITNESS: Thank you.

21 THE COURT: Ms. Simmons?

22 MS. SIMMONS: Yes, Your Honor. I need to get back to  
23 the motion to dismiss in terms of admission of certain exhibits  
24 since that's being carried. But in terms of moving forward  
25 with the evidentiary portion of the DIP financing, the debtor



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1 is resting on the testimony presented in the affidavits and the  
2 questioning that's been done at this hearing.

3 In terms of whether or not the requirements of Section  
4 364 have been met, yes, Your Honor, the proposed financing is  
5 within the sound exercise of the business judgment of the  
6 debtor. As presented in the affidavits, testimony, this  
7 financing was the best available. And the debtor had been  
8 searching for months to find the best available deal through a  
9 loan broker utilized. And this financing, of course, Your  
10 Honor, fifty-two million -- up to fifty-two million to satisfy  
11 all creditors' claims in this case, of course, is in the best  
12 interests of the estate and creditors.

13 And for those reasons, Your Honor, we're asking that  
14 the Court approve the proposed DIP financing with the proposed  
15 DIP lender Baypoint Advisors.

16 THE COURT: For benefit of the record, I'm going to  
17 admit the debtor's Exhibits A through J.

18 (Debtor's Exhibits were hereby received into evidence as  
19 Debtor's Exhibit A through J, as of this date.)

20 THE COURT: I'm going to suspend admission of any of  
21 the JGB exhibits until -- if we get to the motion to dismiss  
22 hearing. So the record will not consist of -- stated on the  
23 record, the debtor's Exhibits A through J and the testimony  
24 elicited here this afternoon.

25 Mr. Kanowitz?



## BRICKCHUIRCH ENTERPRISES, INC.

1 MR. KANOWITZ: Yes, Your Honor. As reported, we  
2 withdraw our objection and subject to just working out the  
3 mechanics so that the DIP liens obviously don't get granted  
4 today. They are subject to JGB's liens until paid off. And  
5 same thing with the adequate protection type of claims and  
6 liens. We're okay with the debtor moving forward with this  
7 process. Thank you.

8 THE COURT: All right. Mr. Isbell?

9 MR. ISBELL: Yes, Your Honor. And that's certainly  
10 correct. We wouldn't ask that we prime them prior to them  
11 being paid off. So there may be a tweak or two to the proposed  
12 DIP order that we need to clarify that. But we'll get that  
13 submitted shortly for Your Honor.

14 THE COURT: All right. Thank you.

15 Mr. Birmingham?

16 MR. BIRMINGHAM: Judge, we don't we don't have any  
17 issues. The only issue that we didn't really have is whether  
18 the debtor will potentially have the ability to repay this  
19 loan. But we don't -- we're not going to make the argument  
20 that this is outside of the -- that the debtor is not using  
21 prudent business judgment. So we have no objection, Judge.

22 THE COURT: All right. All right. So then the Court  
23 is prepared to approve the proposed financing with Baypoint  
24 both as set out in the pleadings as well as updated, if you  
25 will, by the statements on the record, both by counsel for



## BRICKCHUIRCH ENTERPRISES, INC.

1 Baypoint and by Mr. Andros in his testimony. The Court does  
2 find that this is a proper exercise by the debtor of its  
3 business judgment, that the financing was negotiated at arm's  
4 length and in good faith. It is necessary to retire the  
5 primary lien against the primary asset of the estate. And the  
6 Court would make the requisite additional findings, but those  
7 are the sort of the top four of your debtor-in-possession  
8 financing motions.

9 What I'm anticipating then to happen next is you all  
10 are going to submit an iterated debtor-in-possession financing  
11 wherever that has all the bells and whistles necessary to  
12 implement what was put on the record today. Do you all -- do  
13 you all -- within a few days from now, sometime next week?

14 MR. KANOWITZ: Yes, Your Honor. I think it would be  
15 appropriate to take some time to make sure that we have the  
16 mechanics worked out right.

17 One other housekeeping, and I don't mean to bring up  
18 more issues. But the debtor put on a motion for the ability to  
19 pay. Clearly, the motion for the ability to pay was to pay the  
20 undisputed because it's outside of a plan process.

21 So again, with respect to Your Honor's authority and  
22 direction, just paying us off, we would be more comfortable if  
23 there's an order granting that motion and we could tweak that  
24 order to deal with the appropriate resolution of the settlement  
25 and not be technically a 9019 but authorize the debtor to make



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1     that payment so that the DIP order and that -- there's a  
2     package gets the parties to where there's a new lender and the  
3     old lender is pay off.

4             THE COURT: So mechanically, it's fine with me. I've  
5     got two orders out there already setting this procedure in  
6     place. So whether it's updating those orders or a fancy new  
7     order on a different motion that's already pending, I'm okay  
8     with how you all --

9             MR. KANOWITZ: Well, the reason I raise it, I don't  
10    need to wait to get the DIP order entered, for example, if the  
11    DIP order is proper containment of the terms and conditions.  
12    Otherwise, a payoff -- or it doesn't have to be the DIP order.  
13    We could try to put it together. I'm just trying to say move  
14    it along as fast as possible so Your Honor could get orders  
15    entered.

16            THE COURT: I'll enter it as quick as I go. And we  
17    can have you all sign what -- it's up to you. But they're not  
18    advancing till they have the Dip order. So I'm not sure if  
19    there's a -- who comes first as far as the order will go, but  
20    they're not going to advance without the DIP order anyway. So  
21    whether you all do it as one order, separate orders, it's all  
22    going to happen together.

23            MR. KANOWITZ: And I guess we can feel most  
24    comfortable if Your Honor allows or permits or directs the  
25    debtor to pay off to consummate the DIP order and allows us to



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1 receive the proceeds. If you so say it on the record, that  
2 would give us all the parties comfort to know we're moving  
3 forward.

4 THE COURT: Ms. Simmons?

5 MS. SIMMONS: Yes, Your Honor. Pursuant to our motion  
6 to pay that we requested a hearing on today, the debtor, in  
7 order to stop the accrual the interest, we've reached a  
8 settlement. But the intention was to stop the accrual of  
9 interest. We wanted to be able to pay JGB at closing to  
10 extinguish, of course, the liens. And so we want, of course,  
11 the Court's authority today to be able to pay them at closing  
12 instead of at the time of plan confirmation should a plan be  
13 confirmed in this case.

14 THE COURT: That's all fine because, again,  
15 mechanically, whatever lets you all sleep better tonight in  
16 terms of an order for me that says you can borrow money and you  
17 can pay them, that's fine with me because the Baypoint liens  
18 aren't going to spring into existence under the DIP order until  
19 you paid off JGB anyway. So, again, however you all want to  
20 address that, if it's one twenty-five-pager and one five-pager,  
21 that's fine with me. At the end of the day, Baypoint gets  
22 their liens by paying off and taking assignments of the JGB  
23 liens.

24 Everything after that is, again, how you all feel more  
25 comfortable actually doing it, although the most comfort is





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1 going to come when somebody is looking at their wires and sees  
2 it hit. So that's when Mr. Cohen will be comfortable with it  
3 at that point. But it's not when I say it can happen but when  
4 the money hits his account.

5 So go ahead and submit those orders. What I would --  
6 on the DIP order, just circling back to mechanically what needs  
7 to happen. there are -- and this may already be addressed in  
8 the draft that you all submitted, that there are nondebtor  
9 parties who are binding themselves to do things under my order.

10 I do want them to sign off on that order because,  
11 while it's fun for me to order nondebtors to do stuff, it's  
12 more fun when I can actually enforce that order should the need  
13 arise. And given the questions certainly of jurisdiction to do  
14 things, I want to have the nondebtors who are doing stuff under  
15 the DIP order like pledging collateral or like signing  
16 guarantees to actually sign off on the DIP order consent to  
17 enter so that it's clearly effective when I sign it because  
18 they've all said, yeah, I'm going to do that. Okay? So  
19 whatever mechanically needs to happen to get them signing on  
20 board, you all just -- and I know it would be baked in. But  
21 for my purposes, I want to see they have signed, approved for  
22 entry on the DIP order. I think that makes Mr. Isbell happier  
23 anyway, if not Mr. Andros.

24 MR. ISBELL: Yes, Your Honor. Enforceability is  
25 always something that's good to have in a DIP order.



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1 THE COURT: So on a mechanical -- the next question,  
2 leaving hopefully nothing substantive to guess, what I think  
3 I'm hearing now is that when the dust settles and the champagne  
4 has been uncorked, the debtor actually wants to proceed through  
5 to confirm a plan. I know there's a plan on file, but the  
6 debtor is at this point wanting to move to confirm the plan or  
7 you all want to figure out whether or not to move forward with  
8 that or to dismissal.

9 MS. SIMMONS: Your Honor, that is still being decided.  
10 As of today, the debtor plans to move forward with confirming.  
11 But we still need to consult and figure out what the best  
12 option is going forward.

13 THE COURT: Okay. o what we're going to do is get to  
14 a docket control date -- December 14th at 11:30. December 14th  
15 at 11:30. For Mr. Kanowitz's purposes, that will be the carry  
16 date of the motion to dismiss. For my purposes, it's going to  
17 be an adjourned status conference. I don't think there's  
18 enough time between what you all need to do in the next few  
19 days and then to then actually make that any sort of  
20 substantive hearing on confirmation or disclosure statements.  
21 So I'll table that.

22 But the two-pronged conversation that I think you're  
23 next going to be having with Mr. Birmingham is their view on  
24 dismissal if the debtor opts to go that route, or if not,  
25 whether or not the U.S. Trustee's Office would consent to a



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1 combined hearing on plan and disclosure statement because  
2 there's probably stuff to do, just not a whole lot of stuff to  
3 do at that hopeful juncture.

4 So in that kind of scenario to save money and time,  
5 I'm fine moving to a combined hearing on plan and disclosure  
6 statement, just have that conversation with Mr. Birmingham's  
7 office. And then we'll be setting calendar for all of those  
8 things come December 14th. All right? So that'll be December  
9 14th at 11:30.

10 Ms. Simmons, Mr. Kanowitz, you all can flip a coin.  
11 Somebody draft a letter of the case status and dismiss the  
12 motion filed to then.

13 Anything else that you can think of physically  
14 gathered here today in person that we ought to address?

15 MR. KANOWITZ: No, Your Honor. But we do again for  
16 the parties do thank you. Very helpful today.

17 THE COURT: Well, we just provided you a meeting  
18 space. You all did the hard part. So with the Court's  
19 appreciation, I know this has been going on for quite some time  
20 and particularly to Ms. Blouin and Mr. Cohen. I know that you  
21 all have some very deep disagreements about what happened and  
22 why it happened and who did what to who. And you may in the  
23 elevator down or the car ride home have some second thoughts  
24 about was that the right thing, am I happy about what happened,  
25 you all reached a resolution that has been very hard fought and



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1 a very long time coming. From what I see in front of me, you  
2 both have made concessions neither one of you is especially  
3 happy about.

4 But the import I think today with is now this chapter,  
5 no pun intended, can be closed, and you all can move back and  
6 on to doing other more productive things because -- and I  
7 suggest to the principals. You're not going to make any money  
8 sitting in the courtroom. They're making money sitting in the  
9 courtroom, and that's okay. Everybody needs to make a living.  
10 But the clients don't make any money sitting in the courtroom.  
11 And I'm sure there are more fun and valuable things you all can  
12 do with your time other than come back and listen to me drone  
13 on and on.

14 So congratulations to you all for getting this work  
15 done. It took a lot of work from your professionals to get  
16 there as well. And so the Court's appreciation to them for  
17 what they have done.

18 Now, please just go fall into the end zone and close  
19 this thing, okay? All right.

20 Anything else then for this afternoon on Brickchurch?

21 MS. SIMMONS: NO, Your Honor. The debtor has nothing  
22 further.

23 THE COURT: All right. Very well. Well, go forth and  
24 get the money and make it so. Again, the Court appreciations,  
25 best wishes. And the Court will now be in recess. And we'll



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1 go off the record.

2 IN UNISON: Thank you, Your Honor.

3 (Whereupon these proceedings were concluded at 1:45 PM)

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C E R T I F I C A T I O N

I, Michael Drake, certify that the foregoing transcript is a true and accurate record of the proceedings.



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Michael Drake (CER-513, CET-513)  
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Date: October 27, 2022



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